Approved for Release: 2023/07/24 C06874924

(b)(3)
(b)(6)

From:
To:
Cc:
Subject: SSCI# 2014-0339 - Letter to Caroline Krass - Follow-up QFRs from confirmation hearing
Date: Monday, January 06, 2014 6:08:58 PM
Attachments: SSCI# 2014-0339 - Letter to Caroline Krass Follow-up QFRs from confirmation hearing.pdf

(b)(3)
(b)(6)

Attached is a letter to Ms. Caroline Krass from Chairman Feinstein and Vice Chairman Chambliss dated January 6, 2014, transmitting Questions for the Record arising from her confirmation hearing.

Please confirm receipt of this message.

Sincerely,

(b)(6)

Director of Security
U.S. Senate Select Committee on Intelligence

(b)(6)

Approved for Release: 2023/07/24 C06874924

SSCI# 2014-0339

Approved for Release: 2023/07/24 C06874924

DIANNE FEINSTEIN, CALIFORNIA, CHAIRMAN
SAXBY CHAMBLISS, GEORGIA, VICE CHAIRMAN

JOHN D. ROCKEFELLER IV, WEST VIRGINIA
RON WYDEN, OREGON
BARBARA A. MIKULSKI, MARYLAND
MARK UDALL, COLORADO
MARK WARNER, VIRGINIA
MARTIN HEINRICH, NEW MEXICO
ANGUS KING, MAINE

RICHARD BURR, NORTH CAROLINA
JAMES E. RISCH, IDAHO
DANIEL COATS, INDIANA
MARCO RUBIO, FLORIDA
SUSAN COLLINS, MAINE
TOM COBURN, OKLAHOMA

HARRY REID, NEVADA, EX OFFICIO
MITCH MCCONNELL, KENTUCKY, EX OFFICIO
CARL LEVIN, MICHIGAN, EX OFFICIO
JAMES INHOFE, OKLAHOMA, EX OFFICIO

DAVID GRANNIS, STAFF DIRECTOR
MARTHA SCOTT POINDEXTER, MINORITY STAFF DIRECTOR
KATHLEEN P. MCGHEE, CHIEF CLERK

United States Senate

SELECT COMMITTEE ON INTELLIGENCE
WASHINGTON, DC 20510-6475

January 6, 2014

Ms. Caroline Diane Krass
c/o Central Intelligence Agency
Washington, DC 20505

Dear Ms. Krass:

Please find enclosed the Questions for the Record to follow up on your confirmation hearing. We ask that your responses be submitted to the Committee as soon as possible.

(b)(6) Please contact the Committee Staff Director, Mr. David Grannis, at [redacted] with any questions.

Sincerely,

Dianne Feinstein
Chairman

Saxby Chambliss
Vice Chairman

Enclosure

Approved for Release: 2023/07/24 C06874924

Approved for Release: 2023/07/24 C06874924

QUESTIONS FOR THE RECORD
CAROLINE D. KRASS

Covert Action v. Traditional Military Activities

In an interview conducted shortly after the raid that killed Osama bin Laden, then-CIA Director Leon Panetta acknowledged that the operation was a CIA "covert operation," yet it was carried out by DOD personnel using DOD helicopters and other equipment and, because it was acknowledged, it was not "covert." By contrast, until recently, DOD's use of unmanned aerial vehicles to conduct targeted strikes outside of the "hot" battlefields of Afghanistan and Iraq was a secret.

When asked about the difference between "covert actions" conducted by CIA and clandestine military activities conducted by DOD in the prehearing questions provided by this Committee you wrote, "*the President selects which element is best suited for the particular mission based on his assessment of how best to further the national interest.*" Historically speaking, however, Congress sought to impose a higher standard of oversight on "covert action," at least in part, because of the unique foreign policy implications of unacknowledged paramilitary operations.

- ***Has the distinction between covert action and clandestine military activities become a legal technicality left entirely to the discretion of the President?***

- ***What types of paramilitary operations, if any, would be lawful only if carried out as a "covert action" pursuant to a Presidential finding?***

Approved for Release: 2023/07/24 C06874924

Approved for Release: 2023/07/24 C06874924

Covert Action and the UN Charter and Geneva Conventions

In your answers to the Committee's pre-hearing questions about the UN Charter and the Geneva Conventions, you wrote, "*As a general matter, and including with respect to the use of force, the United States respects international law and complies with it to the extent possible in the execution of covert action activities.*"

You also wrote that the U.N. Charter and the Geneva Conventions are NOT self-executing treaties, and therefore they are NOT legally binding upon actions carried out by the U.S. government, including covert actions.

- ***If, as you wrote in your answers to the Committee's pre-hearing questions, the U.S. respects international law and complies with it to the extent possible in the execution of covert action activities, how does the U.S. decide when to abide by international law and when it does not apply?***

- ***Should there be, and is there, special consideration when debating and approving a covert action, if that action would violate non-self-executing treaties or customary international law?***

Approved for Release: 2023/07/24 C06874924

Approved for Release: 2023/07/24 C06874924

QUESTIONS FROM SENATOR WYDEN

1) On March 18, 2011, the Justice Department released a redacted version of a May 6, 2004, Office of Legal Counsel (OLC) opinion written by Assistant Attorney General Jack Goldsmith in response to a Freedom of Information Act action. As described in the public listing on the Justice Department's online FOIA reading room, this opinion was a "Memorandum Regarding Review of the Legality of the [President's Surveillance] Program."

   - Did any of the redacted portions of the May 2004 OLC opinion address bulk telephony metadata collection?

   - If so, did the OLC rely at that time on a statutory basis other than the Foreign Intelligence Surveillance Act for the authority to conduct bulk telephony metadata collection? If so, please describe this statutory basis.

   - Has the OLC taken any action to withdraw this opinion?

   - In light of the recent declassification of information regarding various domestic surveillance programs, do you agree that the redactions of the May 2004 opinion should be reviewed, and that an updated version should be publicly released?

Approved for Release: 2023/07/24 C06874924

Approved for Release: 2023/07/24 C06874924

QUESTIONS FROM SENATOR UDALL

1) Other than the AUMF, are you aware of any existing authorities—legal, policy, or other authorities—that allow the President to use "all necessary and appropriate force" against "those nations, organizations, or persons" determined to plan authorize, commit or aide terrorist attacks against the United States?

2) Are you aware of any existing authorities—legal, policy, or other authorities—that allow the President to use "all necessary and appropriate force" against groups or individuals that haven't been designated "associated forces," e.g., affiliates or those who adhere to the beliefs of any terrorist organization that pose a significant threat to U.S. interests?

3) Who determines whether such "nations, organizations or persons" are designated "associated forces"? Into which nations may the President or other authority send military forces to use "all necessary and appropriate force" against "those nations, organizations, or persons" determined to plan authorize, commit or aid terrorist attacks against the United States?

4) What is the process for identifying "associated forces"? Is this process in writing? What is the notification and approval process prior to action being taken against those "nations, organizations, or persons"?

5) Are operations against these forces dependent upon notification to the President before they are conducted under AUMF or any other authorities?

Approved for Release: 2023/07/24 C06874924

Approved for Release: 2023/07/24 C06874924

6) Article II of the U.S. Constitution states that President shall "shall take Care that the Laws be faithfully executed." Article VI of the U.S. Constitution, known as the "Supremacy Clause," states that "this Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

   - If you learned of a covert action that, in your opinion, violated the Convention Against Torture or the Geneva Conventions, but did not necessarily violate a particular statute such as the Anti-Torture Act or the War Crimes Act, would you advise the Director of Central Intelligence that the action was unlawful?

   - If the Director of Central Intelligence decided to proceed with such an action against your advice, would you inform this committee?

7) How do you see the role of the General Counsel's office, if any, in determining whether information has been properly classified?

8) In 2007, after the passage of the 2006 Military Commissions Act and the 2005 Detainee Treatment Act and the Supreme Court's decision in *Hamdan v. Rumsfeld*, the Office of Legal Counsel concluded that a number of "enhanced interrogation" techniques remained lawful. The harshest of these was "sleep deprivation," carried out by shackling naked, diapered detainees to the ceiling for up to 96 consecutive hours. As you noted during your testimony in 2009, President Obama forbade the CIA from using these techniques, or any interrogation technique outlined in the Army Field Manual—but that prohibition is an Executive Order, which a future President could rescind. If President Obama's Executive Orders on CIA interrogation and detention were overturned, what binding legal authorities would prevent the CIA from engaging in the techniques authorized by the 2007 OLC memos?

Approved for Release: 2023/07/24 C06874924

Approved for Release: 2023/07/24 C06874924

QUESTIONS FROM SENATOR HEINRICH

1) What is your legal opinion on the participation of CIA officers in the interrogations of detainees in liaison custody in which harsh or extreme interrogation techniques are used? In your opinion, is it legal for CIA officers to continue their participation in these interrogations when they witness, know, or otherwise suspect that a detainee has been tortured by a liaison service?

   - In such a circumstance, is there any requirement—legal or policy—that the CIA officer involved report these activities either to the CIA Office of Inspector General, or to anybody?

2) How do you see the role of the General Counsel's office, if any, in determining whether information has been be properly classified?

Approved for Release: 2023/07/24 C06874924

Approved for Release: 2023/07/24 C06874924

QUESTION FROM SENATOR LEVIN

1) At your confirmation hearing, you stated that, if confirmed, you would ensure that the Committee had access to information "as appropriate." Please identify any types of documents that you believe is appropriate for the Intelligence Community to withhold from the committee.

Approved for Release: 2023/07/24 C06874924